

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

KEVIN SYKES-BONNETT and SYKED  
ECU TUNING INCORPORATED, a  
Washington corporation,

Defendants.

No. 3:17-cv-05760 BHS

**DEFENDANTS' REPLY IN SUPPORT  
OF ITS MOTION TO COMPEL  
PRODUCTION**

**NOTING DATE: SEPTEMBER 7, 2018**

Defendants Kevin Sykes-Bonnett, John Martinson, and Syked ECU Tuning Inc. (collectively "Defendants"), by its attorneys, hereby submit their reply in support of their Motion to Compel Plaintiff HP Tuners LLC ("Plaintiff") to produce documents pursuant to Fed. R. Civ. P. 37 (Dkt 75).

**I. INTRODUCTION**

Plaintiff's opposition to Defendants requested relief fails to address the merits of Defendants' motion. Instead, Plaintiff merely makes conclusory and erroneous assertions that Defendants failed to set forth a sufficient evidentiary nexus. Defendants, however, have provided sufficient support for the relevance of the documents it requests. For the reasons set forth in

1 Defendants' Motion to Compel and this reply, Plaintiff should be required to produce the  
2 requested information.

## 3 II. ARGUMENT

4 Under Rule 26, the scope of discovery is broad, and a party must respond to any discovery  
5 request and produce any non-privileged documents that are relevant to an issue in a case. *See*  
6 *Westport Insurance Co. v. Hippo Fleming & Pertile Law Offices*, 319 F.R.D. 214, 216-17 (W.D.  
7 Penn. 2017). Plaintiff's opposition fails to demonstrate why the exhibits to the Honeycutt  
8 documents are irrelevant any issues in this case. Instead, Plaintiff repeats a variation of the same  
9 conclusory statement throughout its motion—that the documents are “irrelevant and immaterial  
10 to resolving the issues in this matter”—but fails to explain *why* the documents requested are  
11 irrelevant. *See* Dkt. 89 at 4.

12 Contrary to Plaintiff's representation in note one of its opposition, the arbitration with  
13 Mr. Honeycutt did involve allegations of hacking. Both Mr. Honeycutt and Plaintiff allege that  
14 Mr. Honeycutt is the individual behind the [discounthptunercredits@mail.com](mailto:discounthptunercredits@mail.com) who threatened to  
15 release version 3.6 of Plaintiff's “cracked” software. *See* Kendrick Decl. at ¶¶ 5, 6, 9, 10; *see*  
16 *also id.* Exhs. A, B. In Mr. Honeycutt's Rule 27 opening brief, he cites to an exhibit immediately  
17 after this statement—one of the exhibits Defendants request Plaintiff to produce. *See* Kendrick  
18 Decl. Exh. A. In its amended complaint filed in this matter, Plaintiff makes the same allegation  
19 against Defendant Kevin Sykes-Bonnett. In fact, Plaintiff alleges that Defendant Kevin Sykes-  
20 Bonnett worked with others, including Matthew Honeycutt to reverse engineer and distribute its  
21 VCM Suite Software. *See* Dkt. 35 at ¶¶ 60-64.<sup>1</sup> These factual allegations are incorporated in all  
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27 <sup>1</sup> Plaintiff also directly references the arbitration between Mr. Honeycutt and Plaintiff in its amended complaint.  
Dkt. 35 at ¶ 61.

1 counts of Plaintiff's complaint and are directly relevant to at least counts 1-4 of Plaintiff's  
2 complaint. Plaintiff's own admissions, both in this case and in the Honeycutt Arbitration,  
3 demonstrate that the exhibits Defendants request are highly relevant. Contrary to Plaintiff's  
4 representations before this Court and in its opposition, Defendants have not admitted to hacking,  
5 using, or misappropriating Plaintiff's source code. Plaintiff cannot accuse multiple people of this  
6 same action and then attempt to hide relevant evidence concerning those accusations. Further,  
7 the Honeycutt documents contain allegations that Plaintiff knew of previous hacking attempts  
8 (some successful). *See* Kendrick Decl. at ¶ 7; *see also id.* Exh. A. The exhibits referenced in  
9 association with these allegations are directly relevant to Defendants' affirmative defenses of at  
10 least laches, unclean hands, and mitigation of damages. Defendants, therefore, are entitled to  
11 these non-privileged documents.  
12

13  
14 Further, Plaintiff's objection to the production of these documents lacks merit. As stated  
15 above, Plaintiff's motion is filled with conclusory statements about these documents being  
16 "irrelevant and immaterial" but Plaintiff fails to provide any explanation of why. Plaintiff should  
17 not be allowed to withhold relevant evidence simply because it holds the subjective view that  
18 these document are irrelevant. Plaintiff's own admissions contradict its position. As such,  
19 Plaintiff's objection lacks merit.  
20

### 21 III. CONCLUSION

22 For the reasons stated above, and in Defendants' Motion to Compel, Defendants  
23 respectfully request that this Court compel Plaintiff to produce all exhibits submitted by either  
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1 party with any pleading in the Matthew Honeycutt arbitration. These exhibits are highly relevant  
2 and Plaintiff's objection to production lacks merit.

3  
4 DATED: September 7, 2018

5 LANE POWELL PC

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2018 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

<b>Attorneys for Plaintiff HP TUNERS, LLC</b>	<input checked="" type="checkbox"/>	by <b>CM/ECF</b>
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Executed on September 7, 2018, at Seattle, Washington.

s/Kathi Milner  
Kathi Milner, Legal Assistant